IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.4788 OF 2003

Maqbool Ahmed Pathan & Anr. .. Applicants.
Vs.
State of Maharashtra .. Respondent.

Mr.A.M.Bhatia for the applicants.
Mr.A.S.Gadkari APP for the respondent.

CORAM : D.B.BHOSALE, J.

DATED : 11TH AUGUST, 2004

P.C.:

. Heard Mr.Bhatia, learned counsel for the applicant and Mr.Gadkari, learned A.P.P. for the respondent.

2. This application is directed against the order dated 8.1.2003 passed by the Additional Sessions Judge in Miscellaneous Application No.1620 of 2002 in Sessions Case No.465 of 2002 by which the prayer seeking transfer of the case to the Chief Metropolitan Magistrate or the court having jurisdiction to try the case has been rejected. Such prayer was made, on the ground that no offence under section 307 of Indian Penal Code has been made out by the prosecution. According to Mr.Bhatia, learned counsel for the applicants, initially section 326 read with 34 of Indian Penal Code were applied and at the stage of the remand,

the charge was altered to section 307. He, therefore, submits that if the applicants are tried under section 307, they will loose one right of appeal before the Sessions Court. I have perused the order impugned and other material placed before me. Considering the facts of the case and the material relied upon by the prosecution, prima facie, I do not find any error in framing the charge against the applicants under section 307 of Indian Penal Code. It is useful to make reference to the observations made by the Apex Court in **State of Maharashtra Vs. Salman Salim Khan & Anr 2004 ALL MR (Cri.) 600 (S.C.)**. The paragraph 4 of the judgment reads thus:

> "4. The law governing the trial of criminal offences provides for alteration of charges at any stage of the proceedings depending upon the evidence adduced in the case. If the trial is being held before a Court of Magistrate it is open to that Court at any stage of trial if it comes to the conclusion that the material on record indicates the commission of an offence which requires to be tried by a superior Court, it can always do so by committing

such case for further trial to a superior Court as contemplated in the Code of Criminal Procedure (the Code). On the contrary, if the trial is being conducted in a superior Court like the Sessions Court and if that Court comes to the conclusion that the evidence produced in the said trial makes out a lesser offence than the one with which the accused is charged, it is always open to that Court based on evidence to convict such accused for a lesser offence. Thus, arguments regarding the framing of a proper charge are best left to be decided by the trial Court at an appropriate stage of the trial. Otherwise as has happened in this case proceedings get protracted by the intervention of the superior Courts".

. It is thus clear that if the trial is to be conducted in the superior Court like Sessions Court and if the court comes to the conclusion that the evidence produced in the said trial makes out a lesser offence than the one with which the accused is charged, it is always open to that Court based on evidence to convict the accused for a lesser

offence. The arguments regarding framing of a proper charge are best left to be decided by the trial court at an appropriate stage of the trial. In my opinion, in the instant case framing of the charge under section 307 does not warrant interference at all. Section 228 of the Criminal Procedure Code merely provides that it is only when the Sessions Court finds that the offence is not exclusively triable by the Sessions Court may frame a charge against the accused and by the order transfer the case for trial to the Chief Judicial Magistrate and thereupon the Chief Judicial Magistrate shall try the offence in accordance with the procedure for the trial or warrant-cases instituted by the police. Considering the law laid down by the Apex Court in the aforesaid case and the provision of section 228 of the Criminal Procedure Code I do not find any infirmity in the order passed by the Sessions Court. No prejudice, whatsoever would be caused to the applicants. The application is, accordingly, rejected.

(D.B.Bhosale, J.)